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HOUSE BILL 585

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Nick L. Salazar

AN ACT

RELATING TO STATE AGENCIES AND DEPARTMENTS; CREATING THE AGING AND LONG-TERM CARE DEPARTMENT; TRANSFERRING FUNCTIONS, PERSONNEL, MONEY, APPROPRIATIONS AND PROPERTY FROM THE STATE AGENCY ON AGING; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 9 of this act may be cited as the "Aging and Long-Term Care Department Act".

Section 2. [NEW MATERIAL] FINDINGS AND PURPOSE. --

A. The legislature finds that a need exists for a single comprehensive approach to effectively and efficiently serve the aging population, their families and caregivers.

B. The legislature further finds that the goal of

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1 creating such a unified systemic approach can best be
2 accomplished by creating a cabinet-level department that will
3 focus concern on the aging population and the long-term care
4 needs of the citizens of New Mexico.

5 C. The purpose of the Aging and Long-Term Care
6 Department Act is to elevate the state agency on aging to a
7 cabinet-level department, change its name and expand its
8 functions and authority to:

9 (1) implement and administer the requirements
10 of the federal Older Americans Act of 1965 and other programs,
11 services and policies that were administered by the state
12 agency on aging;

13 (2) develop programs and unified public
14 policies that address the needs of the aging population, their
15 families and caregivers;

16 (3) develop programs and unified public
17 policies that address the long-term care system in New Mexico
18 and focus on creation of a seamless, comprehensive, efficient
19 and cost-effective home- and community-based long-term care
20 system;

21 (4) coordinate, reorganize and consolidate
22 older adult services by the end of fiscal year 2004;

23 (5) coordinate, reorganize and consolidate all
24 long-term care services for other populations by the end of
25 fiscal year 2006; and

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1 (6) work with consumers, other departments,
2 providers and the legislative health and human services
3 committee to study and recommend a transition plan.

4 Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the
5 Aging and Long-Term Care Department Act:

6 A. "department" means the aging and long-term care
7 department; and

8 B. "secretary" means the secretary of aging and
9 long-term care.

10 Section 4. [NEW MATERIAL] DEPARTMENT CREATED--
11 DIVISIONS. --

12 A. The "aging and long-term care department" is
13 created. The department is a cabinet department and includes
14 the following divisions:

- 15 (1) administrative services division;
- 16 (2) consumer rights and advocacy division;
- 17 (3) aging network services division; and
- 18 (4) long-term care division.

19 B. The secretary is empowered to organize the
20 department and the divisions specified in Subsection A of this
21 section and may transfer or merge functions between divisions
22 in the interest of efficiency and economy.

23 Section 5. [NEW MATERIAL] SECRETARY-- APPOINTMENT. --

24 A. The chief executive and administrative officer
25 of the department is the secretary. The secretary shall be

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1 appointed by the governor with the consent of the senate. The
2 secretary shall hold the office at the pleasure of the governor
3 and shall serve in the executive cabinet.

4 B. An appointed secretary shall serve and have all
5 the duties, responsibilities and authority of that office
6 during the period of time prior to final action by the senate
7 confirming or rejecting his appointment.

8 Section 6. [NEW MATERIAL] SECRETARY--DUTIES AND GENERAL
9 POWERS. --

10 A. The secretary is responsible to the governor for
11 the operation of the department. It is the secretary's duty to
12 manage all operations of the department and to administer and
13 enforce the laws with which the secretary or the department is
14 charged.

15 B. To perform the duties of the secretary, the
16 secretary has every power expressly enumerated in the laws,
17 whether granted to the secretary or the department or a
18 division of the department, except where authority conferred
19 upon a division is explicitly exempted from the secretary's
20 authority by statute. In accordance with these provisions, the
21 secretary shall:

22 (1) except as otherwise provided in the Aging
23 and Long-Term Care Department Act, exercise general supervisory
24 and appointing authority over all department employees, subject
25 to any applicable personnel laws and rules;

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1 (2) delegate authority to subordinates as he
2 deems necessary and appropriate, clearly delineating the
3 delegated authority and its limitations;

4 (3) organize the department into the
5 organizational units the secretary deems will enable it to
6 function most efficiently, subject to provisions of law
7 requiring or establishing specific organizational units;

8 (4) within the limitations of available
9 appropriations and applicable laws, employ and fix the
10 compensation of those persons necessary to discharge the duties
11 of the secretary;

12 (5) take administrative action by issuing
13 orders and instructions, not inconsistent with the law, to
14 ensure implementation of and compliance with the provisions of
15 law for whose administration or execution the secretary is
16 responsible and to enforce those orders and instructions by
17 appropriate administrative action in the courts;

18 (6) conduct research and studies to improve
19 the operations of the department and the provision of services
20 to the citizens of the state;

21 (7) provide courses of instruction and
22 practical training for employees of the department and other
23 persons involved in the administration of programs to improve
24 the operations and efficiency of administration;

25 (8) prepare an annual budget of the

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1 department; and

2 (9) provide cooperation, at the request of
3 heads of administratively attached agencies, to:

4 (a) minimize or eliminate duplication of
5 services and jurisdictional conflicts;

6 (b) coordinate activities and resolve
7 problems of mutual concern; and

8 (c) resolve by agreement the manner and
9 extent to which the department shall provide budgeting,
10 record-keeping and related clerical assistance to
11 administratively attached agencies.

12 C. The secretary may apply for and receive, with
13 the governor's approval, in the name of the department, public
14 or private funds, including United States government funds,
15 available to the department to carry out its programs, duties
16 or services.

17 D. Where functions of departments overlap or a
18 function assigned to one department could better be performed
19 by another department, the secretary may recommend appropriate
20 legislation to the next session of the legislature for its
21 approval.

22 E. The secretary may make and adopt such reasonable
23 procedural rules as may be necessary to carry out the duties of
24 the department and its divisions. A rule promulgated by the
25 director of a division in carrying out the functions and duties

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1 of the division shall not be effective until approved by the
2 secretary unless otherwise provided by law. Unless otherwise
3 provided by law, a rule affecting a person or agency outside
4 the department shall not be adopted, amended or repealed
5 without a public hearing on the proposed action before the
6 secretary or a hearing officer designated by the secretary.
7 The public hearing shall be held in Santa Fe unless otherwise
8 permitted by law. Notice of the subject matter of the rule,
9 the action proposed to be taken, the time and place of the
10 hearing, the manner in which interested persons may present
11 their views and the method by which copies of the proposed
12 rule, proposed amendment or repeal of an existing rule may be
13 obtained shall be published once at least thirty days prior to
14 the hearing date in a newspaper of general circulation and
15 mailed at least thirty days prior to the hearing date to all
16 persons who have made a written request for advance notice of
17 hearing. Rules shall be filed in accordance with the State
18 Rules Act.

19 Section 7. ~~[NEW MATERIAL]~~ ORGANIZATIONAL UNITS OF THE
20 DEPARTMENT-- POWERS AND DUTIES SPECIFIED BY LAW- ACCESS TO
21 INFORMATION.-- Those organizational units of the department and
22 the officers of those units specified by law shall have all of
23 the powers and duties enumerated in the specific laws involved.
24 However, the carrying out of those powers and duties shall be
25 subject to the direction and supervision of the secretary, who

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1 shall retain the final decision-making authority and
2 responsibility for the administration of any such laws as
3 provided in Subsection B of Section 6 of the Aging and Long-
4 Term Care Department Act. The department shall have access to
5 all records, data and information of other state departments,
6 agencies and institutions, including its own organizational
7 units, not specifically held confidential by law.

8 Section 8. [NEW MATERIAL] DIVISION DIRECTORS. -- Except as
9 otherwise provided by law, the secretary shall appoint, with
10 the approval of the governor, directors of divisions
11 established in the department who shall serve at the
12 secretary's pleasure.

13 Section 9. [NEW MATERIAL] BUREAUS--CHIEFS. -- The secretary
14 may establish in the divisions such bureaus as the secretary
15 deems necessary to carry out the provisions of the Aging and
16 Long-Term Care Department Act. The secretary shall employ a
17 chief to be the administrative head of a bureau who shall be
18 covered by, and subject to, the provisions of the Personnel
19 Act.

20 Section 10. Section 9-8-8 NMSA 1978 (being Laws 1977,
21 Chapter 252, Section 9, as amended) is amended to read:

22 "9-8-8. ADMINISTRATIVELY ATTACHED AGENCIES. -- The New
23 Mexico office of Indian affairs and the commission on the
24 status of women [~~and the state agency on aging~~] are
25 administratively attached to the human services department in

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1 accordance with the Executive Reorganization Act. "

2 Section 11. TEMPORARY PROVISION--TRANSITION PLAN. --

3 A. The aging and long-term care department shall be
4 responsible for the administration of the federal Older
5 Americans Act of 1965 and other policies, programs and services
6 that were provided by the state agency on aging.

7 B. The governor may by executive order transfer
8 other existing programs for seniors or persons with
9 disabilities in executive agencies under his control to the
10 aging and long-term care department.

11 C. The office of the governor and the department of
12 finance and administration shall assist the secretary of aging
13 and long-term care in the establishment of the aging and long-
14 term care department.

15 D. At the time of transfer of an agency or program,
16 all personnel, money, appropriations, records, files,
17 furniture, equipment and other property related to the state
18 agency on aging shall be transferred to the aging and long-term
19 care department. Contractual and other obligations of the
20 state agency on aging shall be obligations of the aging and
21 long-term care department.

22 E. On the effective date of the Aging and Long-Term
23 Care Department Act, references in law or rules to the state
24 agency on aging shall be deemed to be references to the aging
25 and long-term care department.

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